(13)

No. 05-1342

Supreme Court, U.S.
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In the Supreme Court of the United States

LINDA A. WATTERS, in her official capacity as Commissioner of the Michigan Office of Financial and Insurance Services,

Petitioner,

v.

WACHOVIA BANK, N.A., and WACHOVIA MORTGAGE CORPORATION,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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SUPREME COURT, U.S.

Petition for Certiorari filed April 18, 2006
Certiorari granted June 19, 2006

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General Docket
US Court of Appeals for the Sixth Circuit
Court of Appeals Docket #: 04-2257 Filed: 10/14/04
Nsuit: 3440 Civil Rights: Other
Wachovia Bank, et al v. Watters
Appeal from: Western District of Michigan at Lansing

- -

Case type information:
1) Civil
2) private
3) federal question

- -

Lower court information:

District: 0646-5 : 03-00105
Trial Judge: Robert Holmes Bell, Chief District Judge
Court Reporter: Kevin Gaugier
Date Filed: 7/21/03
Date order/judgment: 8/31/04
Date NOA filed: 9/24/04

- -

Fee status: paid

- -

Prior cases:
None
Current cases:
None

Docket as of June 26, 2006 9:17 pm

04-2257	Wachovia Bank, et al v. Watters
10/14/04	Civil Case Docketed. Notice filed by Appellant Linda A. Watters. Transcript needed: y (blc)

* * *

1/12/05	PROOF BRIEF filed by John C. Scherbarth for Appellant Linda A. Watters. Certificate of service date 1/10/05 Number of Pages: 39. [04-2257] (rgf)

* * *

1/13/05	MOVANT MOTION filed to allow Natl Assn Realtors & MI Assn Realtors to file an amicus curiae brief and for leave to file oversized brief. Motion filed by Gregory L. McClelland for Movant MI Assn Realtors, Movant Natl Assn Realtors. Certificate of service date 1/12/05 . [04-2257] (blc)
1/13/05	TENDERED : amicus brief of Natl Assn of Realtors and MI Assn of Realtors from Gregory L. McClelland for Movant MI Assn Realtors, Movant Natl Assn Realtors [04-2257] Motion for leave to file pending. (blc)

* * *

1/26/05	Corrected APPELLANT PROOF brief filed by John C. Scherbarth. Copies: 01. Certificate of Service date 1/24/05 [04-2257] (rgf)

* * *

2/10/05	BRIEF filed by Jessica Dvorak for Amicus Curiae IA, et al. Copies 06. Certificate of service date 2/9/05 . Number of Pages: 34. [04-2257] (blc)

* * *

3/18/05	PROOF BRIEF filed by Lori McAllister for Appellee Wachovia Mortgage, Appellee Wachovia Bank. Certificate of service date 3/16/05. Number of Pages: 58++. [04-2257] (rgf)

* * *

3/24/05	BRIEF filed by Douglas B. Jordan for Amicus Curiae Office of the Comptroller of the Currency. Copies 07. Certificate of service date. Number of Pages: 32. [04-2257] Supporting affirmance. (blc)
	* * *
3/24/05	MOVANT MOTION filed to allow Amer Comm Bankers, Consumer Mortgage Coalition, and Financial Serv Roundtable to file an amicus curiae brief supporting appellees. Motion filed by Frederick C. Schafrick for Movant Amer Comm Bank, et al. Certificate of service date 3/23/05. [04-2257] (blc)
3/24/05	TENDERED : amicus brief of Amer Comm Bankers, et al from Frederick C. Schafrick for Movant Financial Serv, Movant Consumer Mortage, Movant Amer Comm Bank [04-2257] Motion pending. (blc)
	* * *
4/8/05	PROOF REPLY BRIEF filed by John C. Scherbarth for Appellant Linda A. Watters Certificate of service date 4/6/05 [04-2257] Final reply brief due 4/27/05. [04-2257] (rgf)
	* * *
4/14/05	APPENDIX filed by John C. Scherbarth for Appellant Linda A. Watters. Copies: 05. Certificate of service date 4/12/05 [04-2257] (rgf)
	* * *
4/15/05	FINAL BRIEF filed by John C. Scherbarth for Appellant Linda A. Watters. Copies: 07. Certificate of service date 4/12/05 Number of Pages: 39. [04-2257] (rgf)

* * *

4/18/05 FINAL REPLY BRIEF filed by John C. Scherbarth for Appellant Linda A. Watters. Copies: 07 Certificate of service date 4/14/05 Number of Pages: 18. [04-2257] (rgf)

* * *

4/29/05 FINAL BRIEF filed by Lori McAllister for Appellee Wachovia Mortgage, Appellee Wachovia Bank. Copies: 07. Certificate of service date 4/27/05. Number of Pages: 58+++. [04-2257] (rgf)

* * *

8/16/05 Oral argument date set for October 27, 2005 in court room 607. Notice of argument sent to counsel on 8/22/05. Notice of argument sent to counsel. [04-2257] (pjm)

* * *

9/2/05 ORDER filed granting motion of American Community of Bankers, Consumer Mortgage Coalition, and Financial Services Roundtable leave to file an amicus curiae brief supporting appellees [3139717-1] filed by Frederick C. Schafrick [04-2257] Entered by order of the court. (blc)

9/2/05 ORDER filed: The motion of the National Association of Realtors and Michigan Association of Realtors for leave to file an oversized amicus brief is denied. The movants may file a corrected brief within the page limitation. Entered by order of the court. (blc)

9/2/05 BRIEF filed by Frederick C. Schafrick for Amicus Curiae Financial Serv, Amicus Curiae Consumer Mortage, Amicus Curiae Amer Comm Bank. Copies 04. Certificate of service

date 3/23/05 (earlier tendered on 3/24/05). Number of Pages: 32. [04-2257] (blc)

* * *

9/15/05	BRIEF filed by Gregory L. McClelland for Amicus Curiae MI Assn Realtors, Amicus Curiae Natl Assn Realtors. Copies 07. Certificate of service date 9/14/05. Number of Pages: 15. [04-2257] See 9/2/05 order. (blc)
12/19/05	OPINION filed: AFFIRMED, decision for publication pursuant to local rule 206 [04-2257] Boyce F. Martin, Jr., Circuit/Authoring Judge, Julia S. Gibbons, Richard Allen Griffin, Circuit Judges. (blc)
10/27/05	CAUSE ARGUED on 10/27/05 by E. John Blanchard for Appellant Linda A. Watters, Lori McAllister for Appellee Wachovia Mortgage, Appellee Wachovia Bank before Judges Martin, Gibbons, Griffin. [04-2257] (kal)
12/19/05	OPINION filed: AFFIRMED, decision for publication pursuant to local rule 206 [04-2257] Boyce F. Martin, Jr., Circuit/Authoring Judge, Julia S. Gibbons, Richard Allen Griffin, Circuit Judges. (blc)
12/19/05	JUDGMENT: AFFIRMED. See opinion. (blc)
12/30/05	PETITION for rehearing before original panel filed by E. John Blanchard for Appellant Linda A. Watters. Certificate of service date 12/29/05. [04-2257] (blc)
1/18/06	ORDER filed denying petition for rehearing before original panel [3295513-1] filed by E. John Blanchard [04-2257]. Boyce F. Martin, Jr.,

	Julia S. Gibbons, Richard A. Griffin, Circuit Judges. (blc)
1/26/06	MANDATE ISSUED with no cost taxed [04-2257] (blc)
5/26/06	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Linda A. Watters. Filed in the Supreme Court on 04-18-06, Supreme Ct. case number: 05-1342. [04-2257] (swh)
6/26/06	U.S. Supreme Court letter filed granting petition for writ of certiorari [3382021-1] filed by Linda A. Watters Supreme Court No. 05-1342 [04-2257]. Filed in the Supreme Court on 06-19-06. (swh)

United States District Court
Western District of Michigan (Lansing)
CIVIL DOCKET FOR CASE #: 5:03-cv-00105-RHB
Wachovia Bank, N.A. et al v. Watters
Assigned to: Chief Judge Robert Holmes Bell
Cause: 42:1983 Other Civil Rights
Date Filed: 07/21/2003

* * *

DATE	#	DOCKET ENTRY
07/21/2003	1	COMPLAINT against Linda A. Watters filed by Wachovia Bank, N.A., Wachovia Mortgage Corporation (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (cmi) (Entered: 07/23/2003)
		* * *
08/29/2003	6	ANSWER to complaint by Linda A. Watters (gjf) (Entered: 09/02/2003)
		* * *
12/01/2003	15	MOTION for summary judgment by plaintiff Wachovia Bank, N.A., response due 12/29/2003; (Silsbury, Lori) (Entered: 12/01/2003)
12/01/2003	16	BRIEF in support of 15 *Oral Argument Requested* filed by Wacovia Bank, N.A. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 5 # 5 Exhibit 4) (Silsbury, Lori) (Entered: 12/01/2003)
		* * *

12/02/2003	18	AFFIDAVIT OF RICHARD Z. GRIMM by plaintiffs Wachovia Bank, N.A. Wachovia Mortgage Corporation (Attachments: # 1 Exhibit A # 2 Exhibit B) (gjf) (Entered: 12/04/2003)
		* * *
01/30/2004	25	MOTION for amicus curiae status by amicus parties America's Community Bankers, American Bankers Association, Consumer Bankers Association, Consumer Mortgage Coalition, Electronic Financial Services Council, Financial Services Roundtable, The, Michigan Bankers Association (Attachments: # 1) (Permut, David) (Entered: 01/30/2004)
01/30/2004	26	MOTION for leave to file *amicus brief w/cert of svc* by amicus parties Mike Beebe, Richard Blumenthal, M. Jane Brady, Steve Carter, Patrick J. Crank, Charles J. Crist Jr., J. Joseph Curran Jr., W.A. Drew Edmondson, Charles C. Foti Jr., Terry Goddard, Christine O. Gregoire, Peter C. Harvey, Mike Hatch, Peter W. Heed, Jim Hood, Phill Kline, Peggy A. Lautenschlager, Bill Lockyer, Larry Long, Lisa Madigan, Patricia A. Madrid, Mike McGrath, Darrell V. McGraw Jr., Hardy Myers, Gerald J. Pappert, Jim Petro, William H. Pryor Jr., Mark Recktenwald, Thomas F. Reilly, Gregg D. Renkes, G. Steven Spagnoletti, Eliot Spitzer, Wayne Stenehjem, Gregory ~~D. Stu~~mbo, Paul Summers, Lawrence G. Wasden (Attachments: # 1 Proposed Document Brief of Amici

		Curiae of Attorney Generals) (gjf) (Entered: 02/02/2004)
01/30/2004	27	BRIEF by amicus Office of the Comptroller of the Currency re 15 . *w/oral argument requested* (Attachments # 1 Attachment Addendum) (gjf) (Entered: 02/02/2004)
		* * *
02/02/2004	29	ORDER re 25 granting motion for amicus curiae status (This entry replaces docket number 28); signed by Chief Judge Robert Holmes Bell (Chief Judge Robert Holmes Bell, ymc) (Entered: 02/02/2004)
02/02/2004	30	ORDER granting 26 motion for leave to file amicus brief; signed by Chief Judge Robert Holmes Bell (Chief Judge Robert Holmes Bell, ymc) (Entered: 02/02/2004
02/02/2004	31	BRIEF by amicus parties America's Community Bankers, American Bankers Association, Consumer Bankers Association, Consumer Mortgage Coalition, Electronic Financial Services Council, Financial Services Roundtable, The, Michigan Bankers Association re 15 (gjf) (Entered: 02/03/2004)
02/02/2004	32	BRIEF by amicus parties Mike Beebe Richard Blumenthal, M. Jane Brady, Steve Carter, Patrick J. Crank, Charles J. Crist Jr., J. Joseph Curran Jr., W.A. Drew Edmondson, Charles C. Foti, Jr., Terry Goddard, Christine O. Gregoire, Peter C. Harvey, Mike Hatch, Peter W.

Heed, Jim Hood, Phill Kline, Peggy A. Lautenschlager, Bill Lockyer, Larry Long, Lisa Madigan, Patricia A. Madrid, Mike McGrath, Darrell V. McGraw Jr., Hardy Myers, Gerald J. Pappert, Jim Petro, William H. Pryor Jr., Mark Recktenwald, Thomas F. Reilly, Gregg D. Renkes, G. Steven Rowe, Ken Salazar, Brian Sandoval, William H. Sorrell, Robert J. Spagnoletti, Eliot Spitzer, Wayne Stenehjem, Gregory D. Stumbo, Paul Summers, Lawrence G. Wasden re 15 (gjf) (Entered: 02/03/2004

* * *

02/19/2004	40	MOTION for leave to file *brief amicus curiae in support of the position of deft w/expedited consideration requested* by amicus parties Michigan Association of Realtors, National Association of Realtors (Attachments: # 1 Proposed Document brief Amicus Curiae) (gjf) (Entered: 02/20/2004)

* * *

02/20/2004	43	RESPONSE TO 32 *Amicus Brief of the Attorneys General* filed by plaintiffs Wachovia Bank, N.A., Wachovia Mortgage Corporation (Silsbury, Lori) (Entered: 02/20/2004)

* * *

02/20/2004	46	RESPONSE in opposition re 15 (*named as brief in opposition to pltfs' motion for summary judgment*) filed by Linda A. Watters (Attachments: # 1 Attachment 1

		# 2 Attachment 2 # 3 Attachment 3 # 4 Attachment 4) (gjf) (Entered 02/24/2004
		* * *
02/23/2004	45	ORDER denying 40 motion for leave to file amicus briefs; signed by Chief Judge Robert Holmes Bell (Chief Judge Robert Holmes Bell, ymc) (Entered: 02/23/2004
03/01/2004	48	REPLY to response to motion re 15 *Plaintiff's Reply Brief in Support of Their Motion for Summary Judgment* filed by Wachovia Bank, N.A. Wachovia Mortgage Corporation (Silsbury, Lori) (Entered: 03/01/2004)
		* * *
03/05/2004	52	MINUTES of motion hearing re 15 held before Chief Judge Robert Holmes Bell (Court Reporter Kevin Gaugier) (Chief Judge Robert Holmes Bell, ymc) (Entered: 03/30/2004)
03/11/2004	50	SUPPLEMENT re 46 (*named as supplemental attachments to brief in opposition to pltfs' motion for summary judgment*) by defendant Linda A. Watters (Attachments: # 1 Attachment 1 # 2 Attachment 2) (gjf) (Entered: 03/11/2004)
		* * *
08/30/2004	59	OPINION; signed by Chief Judge Robert Holmes Bell (Chief Judge Robert Holmes Bell, ymc) (Entered: 08/30/2004)
08/30/2004	60	ORDER granting in part and denying in

		part 15 motion for summary judgment; Plaintiff's claim for declaratory and injunctive relief is GRANTED and Plaintiff's claim under 42 U.S.C. 1983 is DENIED; signed by Chief Judge Robert Holmes Bell (Chief Judge Robert Holmes Bell, ymc) (Entered: 08/30/2004
08/31/2004	61	JUDGMENT in favor of Plaintiffs; signed by Chief Judge Robert Holmes Bell (Chief Judge Robert Holmes Bell, sdb) (Entered: 08/31/2004)
		* * *
09/24/2004	62	NOTICE OF APPEAL re 61 by defendant Linda A. Watters (mrs) (Entered: 09/27/2004)
		* * *
11/02/2004	66	TRANSCRIPT of Oral Argument Re: Plaintiffs' Motion for Summary Judgment held March 5, 2004 before Chief Judge Robert Holmes Bell (Court Reporter: Gaugier, Kevin (616)456-6133 (Entered: 11/02/2004)
12/21/2005	67	SLIP OPINION of USCA re appeal 62 (elc) (Entered: 12/23/2005)
12/21/2005	68	JUDGMENT of USCA re appeal 62 *judgment of the district court is affirmed* (elc) (Entered: 12/23/2005)
01/30/2006	69	MANDATE of USCA re appeal 68 (Entered: 02/02/2006)
06/08/2006	70	LETTER from Supreme Court of the

United States that a petition for writ of certiorari was filed on 4/18/06 and assigned case number 05-1342 re Notice of Appeal 62 (mrs) (Entered: 06/12/2006)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

WACHOVIA BANK, N.A., and
WACHOVIA MORTGAGE CORPORATION,

Plaintiffs,

v.

Civil Action No. 5:03-CV-0105
Hon. Robert Holmes Bell

LINDA A. WATTERS, in her official capacity as Commissioner of the Michigan Office of Insurance and Financial Services,

Defendant.

_____/

William J. Perrone (P27591)
Lori M. Silsbury (P39501)
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124 W. Allegan, Suite 800
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_____/

COMPLAINT

1. This is a complaint for declaratory and injunctive relief to vindicate the rights of Plaintiff Wachovia Bank, N.A. and Wachovia Mortgage Corporation (collectively "Wachovia" or "Plaintiffs") to engage in the business of making first mortgage loans and secondary mortgage loans within the State of Michigan irrespective of restrictions imposed by Michigan state law and to be free from attempts by state regulators to interfere with the exclusive visitorial powers of the Office of the Comptroller of the Currency ("OCC"). Those state law restrictions: (1) are pre-empted by the National Bank Act and by regulations promulgated by the

OCC; and (2) violate 42 U.S.C. § 1983. This action is brought under the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI, the National Bank Act and 42 U.S.C. § 1983.

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the action arises under the Constitution and laws of the United States, including the Supremacy Clause, the National Bank Act and Federal Regulations promulgated by the OCC. In addition, jurisdiction is proper under 28 U.S.C. § 1343(a)(3), in order to protect federal rights and immunities that are subject to deprivation under color of state law. This Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02.

3. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred in this district.

The Parties

4. Plaintiff Wachovia Bank, N.A. ("Wachovia Bank") is a national banking association organized under the National Bank Act, which maintains its main office and principal place of business in North Carolina. Wachovia Mortgage Corporation ("Wachovia Mortgage") has been a wholly-owned operating subsidiary of Wachovia Bank since January 1, 2003, and is engaged in the business of making first mortgage loans and secondary mortgage loans in, among other places, the State of Michigan.

5. Defendant Linda A. Watters ("the Commissioner") is the Commissioner for the State of Michigan's Office of Financial and Insurance Services ("OFIS"). The Commissioner is the state official charged with enforcing the Mortgage Brokers, Lenders, and Servicers Licensing Act, Mich. Comp. Laws § 445.1651 *et seq*, and the

Secondary Mortgage Loan Act, Mich. Comp. Laws § 493.51 *et seq*, the state laws at issue in this case.

The Relevant Federal and State Statutes and Regulations

6. National banks are instrumentalities of federal law created and chartered under the National Bank Act, 12 U.S.C. § 21 *et seq*.

7. Pursuant to the National Bank Act, including 12 U.S.C. § 484, and federal regulations, the OCC has plenary regulatory authority over national banks, including their operating subsidiaries.

8. Pursuant to 12 C.F.R. § 5.34, national banks are authorized to establish operating subsidiaries. "A national bank may conduct in an operating subsidiary activities that are permissible for a national bank...." 12 C.F.R. § 5.34(e)(1). "An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank. If, upon examination, the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action...." 12 C.F.R. § 5.34(e)(3).

9. Under 12 U.S.C. § 484 and 12 C.F.R. § 7.4000, the OCC has exclusive "visitorial" power over national banks and their operating subsidiaries except where federal law specifically provides otherwise. "Visitorial powers" include: "examination of a bank;" "inspection of a bank's books and records;" "regulation and supervision of activities authorized or permitted pursuant to federal banking law;" and "enforcing compliance with any applicable federal or state laws concerning those activities." 12 C.F.R. § 7.4000 (a)(2).

10. Pursuant to 12 C.F.R. § 7.4006, "[u]nless otherwise provided by federal law or OCC regulation, state laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank."

11. Notwithstanding the exclusive authority of the OCC, the Commissioner has attempted to regulate Wachovia's mortgage lending business in Michigan and has attempted to exert visitorial authority over Wachovia.

12. The Mortgage Brokers, Lenders and Servicers Licensing Act (the "Licensing Act") requires that all persons engaged in the business of making first mortgage loans in Michigan be licensed or registered by the State and that they be subject to the Commissioner's visitorial powers.

13. Under Michigan law, a first mortgage lender is required to register with the Commissioner on a form prescribed by the Commissioner. Mich. Comp. Laws § 445.1656(1)(d).

14. Under Michigan law, the Commissioner also has the authority to audit and/or visit mortgage lending institutions registered in the State of Michigan. This authority is granted by Mich. Comp. Laws § 445.1661(2)(c), which states in pertinent part that the Commissioner has the authority "to conduct examinations and investigations of any person as necessary for the efficient enforcement of this act and the rules promulgated under this act."

15. Michigan law further requires that all persons engaged in the business of making secondary mortgage loans in Michigan be registered with OFIS and that they be subject to the Commissioner's visitorial powers pursuant to the Secondary Mortgage Loan Act, Mich. Comp. Laws § 493.51 *et seq.*

16. Section 2 of the Secondary Mortgage Loan Act states in relevant part that "[a] person shall not act as a broker,

lender, or servicer without first obtaining a license or registration as provided by this act." Mich. Comp. Laws § 493.52(1).

17. The Secondary Mortgage Loan Act defines a "secondary mortgage loan" as follows:

> "Secondary mortgage loan" means a loan that is not to be repaid within 90 days, that is made to a person for personal, family, or household purposes, and that is secured by a mortgage upon an interest in real property used as a dwelling if the property is subject to a lien of 1 or more prior mortgages. The loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, the secondary mortgage loan is subject to this act and all other applicable laws of this state.
>
> Mich. Comp. Laws § 493.51(2)(n).

18. The Commissioner has the authority to audit and/or visit secondary mortgage lending institutions registered with the State of Michigan. This authority is granted by Mich. Comp. Laws § 493.56b which states, in pertinent part, that the Commissioner may "conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act."

The Controversy Between the Commissioner and the Plaintiffs

19. The OCC has opined that it has exclusive visitorial authority over national banks and their subsidiaries, and that the OCC's exclusive visitorial authority precludes states from examining or requiring information from national

banks or their subsidiaries. The OCC's opinion supports the position that Wachovia Mortgage, as an operating subsidiary of a national bank, is subject to the OCC's exclusive visitorial authority and is exempt from Michigan state registration requirements. See Interpretive Letter #958 from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency (January 27, 2003).

20. First Union Mortgage Corporation became registered to engage in the business of making first mortgage loans under the Licensing Act on March 27, 1997, and changed its name to Wachovia Mortgage Corporation on February 4, 2002. Wachovia Mortgage Corporation remained continuously registered until it became a wholly-owned operating subsidiary of a national bank effective January 1, 2003. Wachovia Mortgage began making secondary mortgage loans in Michigan after July 1, 2003.

21. Relying on the pre-emptive authority of federal law, as identified by the OCC, Richard Z. Grimm, Vice President and Compliance Officer of Wachovia Mortgage, by letter dated April 3, 2003, notified the Commissioner's office that it was no longer subject to the requirements of the Michigan Licensing Act as a result of becoming a direct operating subsidiary of Wachovia Bank effective January 1, 2003. A copy of this letter is attached as Exhibit 1.

22. By letter dated June 23, 2003, Mark W. Weigold of the Commissioner's office acknowledged the nonrenewal and cancellation of the mortgage registration of Wachovia Mortgage, but stated that as of July 1, 2003, Wachovia Mortgage was no longer authorized to conduct mortgage lending activities in the State of Michigan. A copy of this letter is attached as Exhibit 2. The letter was not received by Wachovia until June 30, 2003.

23. Based on the letter dated June 23, 2003, the Commissioner maintains that Wachovia is required to be registered in the State of Michigan in order to lawfully engage

in the business of making mortgage loans in the State of Michigan. On information and belief, the Commissioner intends to exert visitorial authority and conduct audits on first and secondary mortgage lenders registered in the State of Michigan, and intends to regulate Wachovia's first and secondary mortgage lending business and may issue a cease and desist order in the event that Wachovia attempts to operate its first and secondary mortgage lending business in Michigan without Michigan registrations.

24. Wachovia disagrees with these positions and maintains, consistent with the views of the OCC, that it is not required to be licensed in order to engage in the business of making first or secondary mortgage loans in the State of Michigan and that the Commissioner has no visitorial power over Wachovia.

25. In light of the events described above, an actual controversy exists between Wachovia and the Commissioner concerning the validity of the Licensing Act and the Secondary Mortgage Loan Act as applied to Wachovia, a national bank engaged in the business of making first and secondary mortgage loans through its wholly-owned subsidiaries in the State of Michigan, and over whether the Commissioner has visitorial power over Wachovia.

26. As a result of the Commissioner's position, including the threatened enforcement of the Licensing Act and/or the Secondary Mortgage Loan Act to prohibit Wachovia from conducting its mortgage lending business in Michigan, Wachovia has been and will be irreparably harmed. Wachovia is caught between its federal regulator which, by law exercises exclusive visitorial powers, and the Commissioner, who continues to assert visitorial powers as evidenced by the June 23, 2003 letter to Wachovia Mortgage. Michigan's registration requirements require Wachovia to pay annual registration fees to the State of Michigan. During 2002 and 2003, Wachovia Mortgage paid or will pay $7,172.00 in registration fees to the State of Michigan. Wachovia will be unable to recover this

money in this Court once paid because of the State of Michigan's sovereign immunity and immunity under the Eleventh Amendment. These payments, therefore, constitute economic harm for which Wachovia has no remedy in federal court. Moreover, to the extent Wachovia is forced to comply unnecessarily with Michigan's regulatory regime, including the exercise of visitorial powers, it will have no remedy at law. Any action by the Commissioner to enforce the provisions of the Licensing Act or the Secondary Mortgage Loan Act, therefore, will subject Wachovia to irreparable harm.

Claims for Relief

Count I—Declaratory and Injunctive Relief on Preemption Grounds

27. Wachovia incorporates and realleges each and every allegation contained in paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Michigan's Licensing Act and Secondary Mortgage Loan Act conflict directly with federal laws and regulations insofar as the Michigan statutes impair Wachovia's ability to engage in the business of making first and secondary mortgage loans in the State of Michigan.

29. Michigan's Licensing Act and Secondary Mortgage Loan Act, which grant to the Commissioner visitorial power and audit authority over mortgage lending institutions registered in the State of Michigan, conflict directly with federal laws and regulations insofar as the Michigan statutes impair Wachovia's ability to engage in the business of making first and secondary mortgage loans in the State of Michigan and interfere with the OCC's exclusive visitorial powers.

30. The provisions in Michigan's Licensing Act and Secondary Mortgage Loan Act which grant the Commissioner authority to commence an action in Ingham County Circuit

Court and to issue cease and desist orders, conflict directly with the exclusive enforcement authority granted to the OCC under federal laws and regulations, insofar as the Michigan statutes threaten to impair Wachovia's ability to engage in the business of making mortgage loans in the State of Michigan.

Count II-- 42 U.S.C. § 1983

31. Wachovia incorporates and realleges each and every allegation contained in paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. By virtue of the National Bank Act, federal regulations promulgated by the OCC and the plenary authority of the OCC, Wachovia is immune from the state registration requirement and regulation by the Commissioner. By attempting to regulate Wachovia's mortgage lending business in the State of Michigan, by requiring registration, and by exercising visitorial authority, the Commissioner is interfering with the rights and immunities of Wachovia under federal law and regulations.

33. Michigan's Licensing Act and the Secondary Mortgage Loan Act violate 42 U.S.C. § 1983 insofar as they interfere with the federally-granted rights and immunities of Wachovia to engage in the business of making first mortgage loans and secondary mortgage loans in the State of Michigan.

34. The provisions in Michigan's Licensing Act and Secondary Mortgage Loan Act violate 42 U.S.C. § 1983 insofar as they authorize the Commissioner to interfere with and intrude upon the federally-granted rights and immunities of Wachovia to be free from state enforcement proceedings and to be subjected exclusively to the enforcement authority of the OCC.

Prayer for Relief

WHEREFORE, Plaintiffs pray that this Court:

(A) issue preliminary and permanent injunctions prohibiting the Commissioner and her agents from:

(1) requiring that Wachovia Mortgage maintain a Michigan registration to make first mortgage loans pursuant to Michigan's Licensing Act;

(2) requiring that Wachovia Mortgage maintain a Michigan registration to make secondary mortgage loans pursuant to Michigan's Secondary Mortgage Loan Act;

(3) conducting any enforcement proceedings or taking any other action to enforce Michigan's Licensing Act or Secondary Mortgage Loan Act against Wachovia and its wholly-owned operating subsidiaries engaged in the business of making first mortgage loans and secondary mortgage loans in Michigan;

(4) conducting audits and/or visits or taking any other action to enforce Michigan's Licensing Act and/or Secondary Mortgage Loan Act on Wachovia, a national bank, and its wholly owned operating subsidiaries engaged in the business of making first and secondary mortgage loans in Michigan and thereby intruding on the OCC's exclusive visitorial powers;

(B) enter a judgment declaring that:

(1) Michigan's Licensing Act and Secondary Mortgage Loan Act are pre-empted insofar as they apply to Wachovia, a national bank, and its wholly owned operating subsidiary, Wachovia Mortgage, engaged in the business of making first and secondary mortgage loans in Michigan;

(2) Michigan's Licensing Act and Secondary Mortgage Loan Act are pre-empted insofar as they grant the Commissioner authority to conduct enforcement proceedings against Wachovia, a national bank, and its wholly owned operating subsidiary Wachovia Mortgage, engaged in the

business of making first and secondary mortgage loans in Michigan;

(3) Michigan's Licensing Act and Secondary Mortgage Loan Act are pre-empted insofar as they grant the Commissioner the authority to audit and/or visit Wachovia, a national bank, and its wholly owned operating subsidiary Wachovia Mortgage, engaged in the business of making first and secondary mortgage loans in Michigan and insofar as they intrude on the OCC's exclusive visitorial powers;

(C) award Wachovia its reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

(D) grant Wachovia such other and further relief, including costs, as the Court may deem just and proper.

The undersigned hereby consents to electronic service in the above-captioned matter.

Respectfully submitted by,

DYKEMA GOSSETT PLLC

By: /s Lori M. Silsbury
Lori M. Silsbury (P39501)
William J. Perrone (P27591
Attorneys for Plaintiffs
124 W. Allegan, Suite 800
Lansing, Michigan 48933-1
(517) 374-91[illegible]0

Dated: July 21, 2003

achovia
ortgage
›rporation

Wachovia Mortgage Corporation
PO Box 900001
Raleigh, NC 27675-9001

1100 Corporate Center Drive
Raleigh NC 27607-5066

April 3, 2003

Mr. Frances K. Wallace
Chief Deputy Commissioner
Financial Institutions Bureau
611 W. Ottawa St.
Lansing, MI 48909-0220

RE: Registration Certificate #: FR0601

Dear Mr. Wallace:

Wachovia Mortgage Corporation ("WMC") presently holds the above-referenced registration certificate under the Michigan Mortgage Brokers, Lenders, and Servicers Licensing Act. Effective January 1, 2003, WMC became a wholly owned operating subsidiary of Wachovia Bank, N.A. Effective with that date, WMC will engage in mortgage lending and servicing activities, as well as certain other lending activities, as authorized by regulations of the Office of the Comptroller of the Currency ("OCC").

As you are aware, operating subsidiaries of national banks are regularly examined and monitored by the OTS and are generally consolidated and treated as a unit with the parent national bank for federal statutory and regulatory puruposes. 12 C.F.R. Section 5.34(e)(3) and (4). Unless otherwise specified by federal law or OCC regulations, state laws apply

to an operating subsidiary only to the extent that the state law would apply to the parent national bank. 12 C.F.R. Section 7.0004. Accordingly, state law, including the obligation to be licensed or registered, applies to an operating subsidiary only to the extent that it applies to the parent national bank.

The courts and OCC have long taken the position that national banks need not be licensed to carry out activities authorized by federal law. *See Bank of America Nat. Trust and Sav. Ass'n v. Lima*, 103 F. Supp. 916 (D. Mass. 1952) and cases cited therein. See also OCC Interpretive Letter dated March 24, 1994 (mortgage lender registration and fee provisions of Georgia law preempted by federal law). CCH Fed. Banking L. Rep. ¶ 83553 (1994 transfer binder)

This extension of the federal preemption applicable to federally chartered institutions to their operating subsidiaries has been recognized and approved by several courts.

EXHIBIT 1

April 3, 2003
Page 2

See, e.g., WFS Financial Inc. v. Dean, 79 F. Supp. 2d 1024 (W.D. Wis. 1999); *Chaires v. Chevy Chase Bank, F.S.B.*, 748 A.2d 34 (Md. Ct. Spec. App.), *cert. denied* 359 Md. 334 (2000).

The courts and the OCC have clearly stated that state licensing laws do not apply to national banks. As such, state laws imposing licensing or registration requirements on national banks or otherwise regulating certain mortgage lending practices of national banks are preempted. This preemption exists whether or not the state recognizes the preemption through an exemption in its licensing statute.

As previously noted, the OCC has extended this same preemption to operating subsidiaries of national banks. As a

result, state laws that impose licensing or registration requirements on the lending activities of a national bank operating subsidiary are preempted.

Currently, WMC is registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act in accordance with the Mich. Comp. Laws Ann. § 445.1651 et. seq. Under federal preemption, these registration requirements would not apply to a national bank and therefore cannot be applied to an operating subsidiary of a national bank.

Please be assured that, notwithstanding our change in status, WMC will continue to be fully responsive to your office regarding inquiries from any of our borrowers or potential borrowers. Please continue to forward customer complaints to my attention as follows: Richard Z. Grimm, Vice President/Compliance Officer, 1100 Corporate Center Drive/NC-4755, Raleigh, NC 27607. If you have any questions regarding this matter, please contact me at 919-852-6777.

Very truly yours,

/s Richard Z. Grimm

Richard Z. Grimm
Vice President/Compliance Officer

cc: Debra Warren, President/CEO
Brian J. Evans, Senior Vice President

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

WACHOVIA BANK, N.A. and
WACHOVIA MORTGAGE CORPORATION,

Plaintiffs,

v

Civil Action No. 5:03CV0105

LINDA A. WATTERS, in her official capacity as
Commissioner of the Michigan Office of
Insurance and Financial Services,

Hon. Robert Holmes Bell

Defendant.

_____/

William J. Perrone (P27591)
Lori M. Silsbury (P39501)
Dykema Gossett PLLC
Attorneys for Plaintiffs
124 W. Allegan, Suite 800
Lansing, MI 48933
(517)374-9150

John C. Scherbarth (P28865)
Attorney for Defendant
Department of Attorney General
Insurance & Banking Division
P.O. Box 30212
Lansing, Michigan 48909
(517)373-1160

_____/

ANSWER TO COMPLAINT

Defendant, Linda A. Watters, Commissioner of the Michigan Office of Financial and Insurance Services, by her attorneys, Michael A. Cox, Attorney General of Michigan, and John C. Scherbarth, Assistant Attorney General, answers the Complaint as follows:

1. In answer to the allegations in the second sentence of paragraph 1 of the Complaint, Defendant denies that Michigan state law restrictions are preempted by the National Bank Act and regulations promulgated by the OCC, and further denies that Michigan state law applicable to the regulation of businesses engaged in making first and second mortgage loans violates 42 USC § 1983. The remainder of paragraph 1 is merely a description of Plaintiffs' action. Defendant admits that this court has jurisdiction to address the case or controversy presented by Plaintiffs. However, Defendant denies the implication that any of Plaintiffs' federal rights and immunities have been deprived under color of state law.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are admitted.

4. The allegations of paragraph 4 are admitted, except that Wachovia Mortgage Corporation has never been registered in Michigan to make secondary mortgages.

5. The allegations of paragraph 5 are admitted. In further response, Wachovia Mortgage Corporation has never been licensed or registered under the Secondary Mortgage Loan Act, MCL 493.51 *et seq*.

6. The allegations of paragraph 6 are admitted.

7. The allegations of paragraph 7 are admitted as to national banks, but denied as to operating subsidiaries.

8. In response to paragraph 8, Defendant admits that the quoted excerpt is from the cited authority.

9. In response to paragraph 9, Defendant admits that the quoted excerpt is from the cited authority.

10. In response to paragraph 10, Defendant admits that the quoted excerpt is from the cited authority.

11. In response to paragraph 11, Defendant admits that she has regulated Wachovia Mortgage Corporation because Wachovia Mortgage Corporation registered with the State of Michigan, state law require registration, and registration pursuant to the Mortgage Brokers, Lenders, Services Licensing Act (MBLSLA), MCL 445.1651 *et seq*. is not preempted by federal law. A registrant such as Wachovia Mortgage Corporation is subject to regulatory oversight by the Commissioner which is significantly reduced from regulations applicable to mortgage licensees. Section 6(2) of the MBLSLA specifically exempts a registrant from Sections 3 (License or renewal application), 4 (Proof of financial responsibility) and 5 (Minimum net worth). Section 6(3) of the MBLSLA exempts a registrant from Sections 29(1)(b) or (c) (Certain prohibited conduct). A registrant such as Wachovia Mortgage Corporation that is a subsidiary of a federally chartered depository financial institution is subject to investigation by the Commissioner upon the receipt of a complaint, but only if the complaint is not being adequately pursued by the appropriate federal regulatory agency, in this case, the OCC. Section 13(2) of the MBLSLA. Defendant denies that she has attempted to exert authority over Wachovia Bank, N.A., and further denies the implication that the OCC has exclusive authority over Wachovia Mortgage Corporation's mortgage lending business in Michigan.

12. The allegations of paragraph 12 are denied for the reason that the Mortgage Brokers, Lenders & Services Licensing Act, MCL 445.1651 *et seq*, provides exemptions to certain persons engaged in the business of making first

mortgage loans in Michigan. Further, the MBLSLA does not describe the Commissioners powers as "visitorial" which is a term used in the National Bank Act. Instead, the MBLSLA sets forth the Commissioner's authority over a registrant, subject to the exemptions described in paragraph 11 above.

13. In response to paragraph 13, to the extent a first mortgage lender is required to register with the Commissioner, Defendant admits that the registration is required to be on a form prescribed by the Commissioner.

14. The allegations of the first sentence of paragraph 14 are admitted, but only to the extent and under the conditions set forth in Section 13(2) of the MBLSLA discussed in paragraph 11 above. In further response to paragraph 14, Defendant admits that the quoted excerpt is from the cited authority.

15. The allegations of paragraph 15 are denied for the reason that the Secondary Mortgage Loan Act, MCL 493.51 *et seq*, provides exemption from registration set forth in MCL 493.52. In further response, the Secondary Mortgage Loan Act (SMLA), MCL § 493.51 *et seq*. does not describe the Commissioner's powers as "visitorial" which is a term used in the National Bank Act. The specific powers of the Commissioner are set forth in § 6b of the SMLA, MCL § 493.56b.

16. In response to paragraph 16, Defendant admits that the quoted excerpt is from the cited authority.

17. In response to paragraph 17, Defendant admits that the quoted excerpt is from the cited authority.

18. In response to paragraph 18, Defendant admits that the quoted excerpt is from the cited authority.

19. As to the allegations of paragraph 19, Defendant admits that the OCC issued the cited interpretive letter but denies it is a correct interpretation of the law. As to the remaining

allegations of paragraph 19, the interpretive letter speaks for itself. In further response, Defendant denies the conclusion of the interpretive letter by the OCC that a state-chartered corporation operating within a state is exempt from that state's registration requirements.

20. The allegations of the first sentence of paragraph 20 are admitted. The allegations of the second sentence of paragraph 20 are denied because Wachovia Mortgage Corporation did not provide notification of its desire to surrender its Michigan registration to Defendant until April 14, 2003. Accordingly, Wachovia Mortgage Corporation was registered pursuant to Michigan law until at least April 14, 2003. Wachovia Mortgage Corporation did not and has not returned its original registration to Defendant, which is required for surrender of a registration in Michigan. MCL 405.1660(1). Defendant is without sufficient information to reply to the allegations in the third sentence of paragraph 20.

21. The allegations of paragraph 21 are admitted to the extent that the identified letter dated April 3, 2003 was received by Defendant on April 14, 2003. Defendant neither admits nor denies the asserted motivation for submittal of the letter.

22. The allegations of paragraph 22 are admitted, except that Defendant is unable to confirm the date the letter was received by Wachovia.

23. The allegations of the first sentence of paragraph 23 are admitted as to Wachovia Mortgage Corporation and denied as to Wachovia Bank, N.A. The allegations of the second sentence of paragraph 23 as to Wachovia Mortgage Corporation pertaining to "visitorial" authority are denied for the reasons discussed above in paragraph 12. The allegations of the second sentence of paragraph 23 as to Wachovia Mortgage Corporation pertaining to audits is denied because a registrant under the MBLSLA is not subject to annual examination. Section 6(2) of the MBLSLA. The Defendant

admits that she intends to regulate Wachovia Mortgage Corporation's first and secondary mortgage lending business to the extent authorized by Michigan law, which is subject to the limitations from regulation discussed above. Defendant denies that she intends to regulate Wachovia Bank, N.A.

24. In response to paragraph 24, Defendant neither admits nor denies Wachovia's statement of its position. In further response, Defendant asserts that Wachovia Mortgage Corporation is required to be registered in order to engage in the business of making first or secondary mortgage loans in Michigan, not to be licensed as alleged by Plaintiffs.

25. The allegations of paragraph 25 are admitted as to Wachovia Mortgage Corporation except as to the use of the term "visitorial powers" as discussed in paragraph 12 above. The allegations of paragraph 25 are denied as to Wachovia Bank, N.A. for the reason that Wachovia Bank, N.A. and Wachovia Mortgage Corporation are separate and distinct legal entities. Defendant does not assert that the Mortgage Brokers, Lenders & Services Licensing Act and the Secondary Mortgage Loan Act apply to Wachovia Bank, N.A.

26. The allegations of paragraph 26, to the extent the allegations allege irreparable harm, are denied for the reason that Wachovia Mortgage Corporation will face no irreparable harm from continuing to be regulated by the state of Michigan. Defendant denies the allegation that the federal regulator exercises exclusive visitorial powers over Wachovia Mortgage Corporation for the reason that the federal regulator has incorrectly interpreted the National Bank Act as applied to an operating subsidiary of a national bank. While the Commissioner's authority over Wachovia Mortgage Corporation described above is not described as "visitorial", the Commissioner does assert jurisdiction over Wachovia Mortgage Corporation to the extent discussed above in paragraphs 11, 12, 15, and 23. Defendant admits that the federal regulator asserts exclusive visitorial powers. Defendant admits that Wachovia Mortgage Corporation paid $3,540 to the

state of Michigan in registration fees for the year 2002 and is required to pay $3,632 as a renewal fee for 2003 in registration fees, for a total of $7,172. Defendant admits that the state of Michigan has sovereign immunity and immunity under the Eleventh Amendment of the United States Constitution.

27. In response to paragraph 27, Defendant incorporates and realleges each and every response contained in paragraphs 1-26 of this answer.

28. The allegations of paragraph 28 are denied as to Wachovia Bank, N.A. for the reason that the cited state statutes do not apply to a national bank. The allegations of paragraph 28 are denied as to Wachovia Mortgage Corporation for the reason that Wachovia Mortgage Corporation has engaged in the business of making first mortgage loans in the state of Michigan under Michigan law and may continue to do so upon compliance with Michigan law. Thus, Wachovia Mortgage Corporation's ability to engage in the business of making first and secondary mortgage loans in the state of Michigan is not impaired. Defendant denies that there is a conflict between federal laws and regulations and Michigan state laws regulating the business of making first and secondary mortgage loans. Defendant admits that the OCC has interpreted federal law in such a way as to create a conflict between federal and state law.

29. The allegations of paragraph 29 are denied as they pertain to Wachovia Bank, N.A. for the reason that Michigan's Mortgage Brokers, Lenders & Services Licensing Act and Secondary Mortgage Loan Act do not apply to a national bank. The allegations of paragraph 29 are denied as to Wachovia Mortgage Corporation for the reasons set forth in response to paragraph 28 above. In further response, Defendant denies that the OCC has exclusive powers over Wachovia Mortgage Corporation.

30. The allegations of paragraph 30 are denied as they pertain to Wachovia Bank, N.A. for the reason that Michigan's

Mortgage Brokers, Lenders & Services Licensing Act and Secondary Mortgage Loan Act do not apply to a national bank. The allegations of paragraph 30 are admitted as to Wachovia Mortgage Corporation to the extent of the characterization of the Commissioner's authority. The allegations of paragraph 30 pertaining to an alleged conflict with exclusive enforcement authority granted to the OCC is denied for the reason that the OCC does not have exclusive enforcement authority over Wachovia Mortgage Corporation to the extent it is conducting its mortgage lending activities in the state of Michigan. Defendant denies that Michigan statutes impair Wachovia Mortgage Corporation's ability to engage in the business of making mortgage loans in the state of Michigan for the reason that they facilitate the ability of Wachovia Mortgage Corporation to engage in such a business. Wachovia Mortgage Corporation has successfully engaged in the business of making mortgage loans in Michigan since its initial registration with the Michigan Office of Financial and Insurance Services in 1997.

31. In response to paragraph 31, Defendant incorporates and realleges each and every response contained in paragraphs 1-30 of this answer.

32. The allegations of the first sentence of paragraph 32 are admitted as to Wachovia Bank, N.A., but are denied as to Wachovia Mortgage Corporation. The allegations of the second sentence of paragraph 32 are denied as to Wachovia Bank, N.A., because the Defendant requires no registration and does not exercise authority over a national bank pursuant to either the MBLSLA or the SMLA. The allegations of the second sentence of paragraph 32 as to Wachovia Mortgage Corporation are denied.

33. The allegations of paragraph 33 are denied.

34. The allegations of paragraph 34 are denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim for which relief may be granted because the Tenth Amendment to the United States Constitution reserves to the states those powers not delegated to the United States by the Constitution, nor prohibited by it to the states.

2. Plaintiff Wachovia Bank, N.A. lacks standing to assert the claims set forth in the Complaint because Defendant is not asserting any regulatory authority over Wachovia Bank, N.A.

3. To the extent, if any, that Plaintiffs are seeking relief other than prospective relief, this court lacks jurisdiction under the Eleventh Amendment of the United States Constitution.

4. Plaintiffs fail to state a claim for which relief may be granted because the OCC's regulations that OCC claims preempt state authority over operating subsidiaries are contrary to Congressional intent regarding the scope of preemption under the National Bank Act.

5. Plaintiffs fail to state a claim for which relief may be granted under 42 USC § 1983 because a claim of preemption is not based on an alleged deprivation of a federal right within the meaning of 42 USC § 1983.

6. Plaintiffs fail to state a claim for which relief may be granted because the National Bank Act does not, nor was it Congress's intent to preempt state regulation of state-chartered

subsidiaries of nationally-chartered banks such as Wachovia Mortgage Corporation.

Respectfully submitted

Michael A. Cox
Attorney General

John C. Scherbarth (P28865)
Assistant Attorney General
Insurance & Banking Division
P.O. Box 30212
Lansing, Michigan 48909
(517) 373-1160

Dated: August 29, 2003

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

WACHOVIA BANK, N.A., and
WACHOVIA MORTGAGE CORPORATION,

Plaintiffs,

Civil Action No. 5:03-CV-0105

v.

Hon. Robert Holmes Bell

LINDA A. WATTERS, in her official capacity as Commissioner of the Michigan Office of Insurance and Financial Services,

Defendant.
_____/

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

***

B. Undisputed Material Facts

Only a few facts are material to the dispositive legal issues in this action. They are:

- Plaintiff, Wachovia Bank, is a national banking association chartered under the National Bank Act.

- Wachovia Bank wholly owns its operating subsidiary, Wachovia Mortgage.
- Wachovia Bank, through Wachovia Mortgage, engages in mortgage lending in Michigan.

- The plaintiffs maintain that they are subject to the exclusive visitorial authority of the OCC and that, because of federal preemption of Michigan state registration requirements as applied to national banks and their operating subsidiaries, they are not required to maintain state registrations to engage in mortgage lending.

- Notwithstanding federal law, the defendant, the Commissioner of OFIS intends to enforce state laws under which Wachovia Mortgage must maintain state registrations to engage in first and secondary mortgage lending in Michigan and under which the Commissioner has visitorial and enforcement authority over Wachovia Mortgage for mortgage lending activity in Michigan.

None of these material facts are disputed.[1]

---

[1] Summary disposition is appropriate pursuant to Fed. R. Civ. P. 56(c) when no genuine issues of material facts are in dispute.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

WACHOVIA BANK, N.A., and
WACHOVIA MORTGAGE CORPORATION,

Plaintiffs,

Civil Action No. 5:03-CV-0105

v.

Hon. Robert Holmes Bell

LINDA A. WATTERS, in her official capacity as Commissioner of the Michigan Office of Insurance and Financial Services,

Defendant.
_____/

AFFIDAVIT OF RICHARD Z. GRIMM

State of North Carolina)
)ss
County of Wake)

Richard Z. Grimm, being duly sworn, deposes and states:

1. I am a Vice President and Compliance Manager for Wachovia Mortgage Corporation. I have personal knowledge of the facts set forth herein and am competent to so testify.

2. Wachovia Bank, N.A. is a national banking association chartered under the National Bank Act, 12 U.S.C. § 21 *et seq*.

3. Wachovia Mortgage Corporation, previously named First Union Mortgage Corporation, originally registered to engage in the business of making first mortgage loans in Michigan on March 27, 1997. Wachovia Mortgage Corporation ("Wachovia Mortgage") is organized under the laws of North Carolina.

4. On January 1, 2003, Wachovia Mortgage became a wholly owned operating subsidiary of Wachovia Bank, and is engaged in the business of making first mortgage loans in, among other places, the State of Michigan. After July 1, 2003, Wachovia Mortgage also began to engage in the business of making secondary mortgage loans in Michigan.

5. As a wholly operating subsidiary of Wachnovia Bank, N.A., Wachovia Mortgage is authorized to originate mortgage loans in all 50 states, plus the District of Columbia.

6. By letter dated April 3, 2003, I advised the State of Michigan that I was surrendering Wachovia Mortgage's first mortgage lending registration for Michigan. A copy of this letter is attached as Exhibit A. I also stated that, effective January 1, 2003, Wachovia Mortgage became a direct operating subsidiary of Wachovia Bank, and accordingly, on that date Wachovia Mortgage would become exempt from registration under the laws of Michigan.

7. The Michigan Office of Financial and Insurance Services responded by letter dated June 23, 2003 signed by Mark W. Weigold. Mr. Weigold's letter is attached as Exhibit B.

Further affiant sayeth not.

/s Richard Z. Grimm
Richard Z. Grimm

Sworn to before me this
1st day of December, 2003.

/s Terry L. Fox
Notary Public
My commission expires 12/13/03

achovia
ortgage
rporation

Wachovia Mortgage Corporation
PO Box 900001
Raleigh, NC 27675-9001

1100 Corporate Center Drive
Raleigh NC 27607-5066

April 14, 2003

Mr. Allan Huber
Senior Review Specialist
Financial Institutions Bureau
611 W. Ottawa St., Floor 2
Lansing, MI 48933

Re: Annual Report – Registration Certificate #: FR0601

Dear Mr. Huber:

Wachovia Mortgage Corporation ("WMC") provided notice to the Financial Institutions Bureau on April 3, 2003, that we are no longer registered under the Michigan Brokers, Lenders, and Servicers Licensing Act. Effective January 1, 2003, WMC became a wholly owned operating subsidiary of Wachovia Bank, N.A. Effective with that date, WMC is regulated by the Office of the Comptroller of the Currency ("OCC").

Enclosed is our final annual report of 2002 activity. As we are not renewing our registration, it is our understanding that no operating fee will be assessed under MCL § 445.1658(3)(b).

If you have any questions regarding this matter, please contact me at 919-852-6777.

Very truly yours,

/s Richard Z. Grimm

Richard Z. Grimm
Vice President/Compliance Officer

cc: Brian J. Evans, Senior Vice President

Exhibit 1-A

FIS 1077 (01/03) Michigan Office of Financial & Insurance Services

Authorized by PA 173 of 1987, as amended. Required for supervisory purposes and the establishment of the annual operating fee.

DATE DUE – March 3, 2003

Mortgage Brokers, Lenders, and Servicers Annual Report for the Year Ended December 31, 2002

WARNING: Failure to file this annual report will result in commencement of administrative action against the license or registration.

File the original report. All questions refer only to loans brokered, originated, or serviced under the Mortgage Brokers, Lenders, and Servicers Licensing Act, Public Act 173 of 1987, as amended.

FULL NAME OF LICENSEE OR REGISTRANT	LICENSE OR REGISTRATION NO
Wachovia Mortgage Corporation	FR 601

CERTIFICATION

I hereby certify that I have read and knowingly made the following statements and representations and that each and every such statement and representation is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement, misrepresentation, or fraud in connection with this report may be cause for revocation, suspension, or other disciplinary action, against the company's mortgage broker, lender, or servicer license or registration.

Date: 4/14/03 Signature /s Richard Z. Grimm

Title Vice President/Compliance Officer

1. Fiscal year-end of the licensee/registrant:_____

2. List the name, title, mailing address, phone number, and facsimile number of theperson to whom correspondence regarding the license/registration should be sent.

Name: Richard Z. Grimm

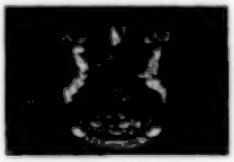
Title: Vice President/Compliance Officer

Business Phone No.: 919-852-6777

Facsimile Number: 919-852-7210

Mailing Address: 1100 Corporate Center Drive/NC-4755

Raleigh, NC 27607-5066



JENNIFER M. GRANHOLM GOVERNOR	STATE OF MICHIGAN OFFICE OF FINANCIAL AND INSURANCE SERVICES DEPARTMENT OF CONSUMER & INDUSTRY SERVICES DAVID C. HOLLISTER, DIRECTOR	LINDA A. WATTERS COMMISSIONER

June 23, 2003

Richard Z. Grimm, VP
Wachovia Mortgage Corporation
1100 Corporate Center Drive
Raleigh, NH 27607-5066

Dear Mr. Grimm:

This letter is to acknowledge the non-renewal and cancellation of the mortgage registration (no. FR-0601) issued in the name of Wachovia Mortgage Corporation under the Mortgage Brokers, Lenders, and Servicers Licensing Act.

Mortgage registration number FR-0601 will be made inactive as of July 1, 2003 pursuant to your written request (letter received April 14, 2003). Please return original registration number FR-0601 to our office.

Please be advised that Wachovia Mortgage Corporation will not be registered pursuant to the Mortgage Brokers, Lenders, and Servicers Licensing Act as of July 1, 2003. Therefore, Wachovia Mortgage Corporation will not be authorized to conduct activities that require licensure or registration pursuant to the Mortgage Brokers, Lenders, and Servicers Licensing Act as of July 1, 2003.

Section 2(1) of the Mortgage Brokers, Lenders, and Servicers Licensing Act states:

"A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without irst obtaining a license or registering under this act, unless 1 or more of the following apply: (a) The person is solely performing services as an employee of only 1 mortgage broker, mortgage lender, or mortgage servicer."

Finally, Wachovia Mortgage Corporation is to review its records and verify that it has filed all required documents

(annual reports, financial statements, license renewals, etc.) and paid all outstanding fees and invoices. Failure to file a required document or to pay an outstanding fee or invoice will be considered in the future filing of license or registration applications by Wachovia Mortgage Corporation or affiliations of Wachovia Mortgage Corporation.

Exhibit 1-B

Richard Z. Grimm, VP
Wachovia Mortgage Corporation
June 23, 2003
Page 2

If you have any questions concerning this letter, please contact me at (517) 373-3460.

Sincerely,

/s Mark W. Weigold

Mark W. Weigold, Manager
Qualifications Assessment Unit

cc: Allan Huber
Conduct Review Division

Supreme Court of the United States

No. 05-1342

Linda A. Watters, Commissioner, Michigan Office of Insurance and Financial Services
Petitioner

v.

Wachovia Bank, N.A., et al.
Respondent

ON PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Sixth Circuit, No. 04-2257.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Sixth Circuit.

IT IS ORDERED by this Court that the said petition is granted.

Justice Thomas took no part in the consideration or decision of this petition.

June 19, 2006

A true copy WILLIAM K. SUTER
Test:
Clerk of the Supreme Court of the
United States
By_____
Deputy